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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

TORONTO HOSPITAL ACT

TUESDAY, OCTOBER 28, 1986



STANDING-COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Johnston, R. F. (Scarborough West NDP)

VICE-CHAIRMAN: Allen, R. (Hamilton West NDP)

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Jackson, C. (Burlington South PC)

Miller, G. I. (Haldimand-Norfolk L)

Offer, S. (Mississauga North L)

Reycraft, D. R. (Middlesex L)

Ward, C. C. (Wentworth North L)

Substitution:

Cooke, D. S. (Windsor-Riverside NDP) for Mr. Grande

Clerk: Carrozza, F.

Staff:

Mifsud, L., Legislative Counsel

Witnesses:

From the Ministry of Health:

Campbell, M., Legal Counsel

From the Toronto General Hospital:

Kenny, W., Legal Counsel

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Tuesday, October 28, 1986

The committee met at 3:34 p.m. in committee room 1.

TORONTO HOSPITAL ACT
(continued)

Consideration of Bill 129, An Act to amalgamate Toronto General Hospital and Toronto Western Hospital.

Mr. Chairman: I call the committee to order. We are here to deal with Bill 129, An Act to amalgamate Toronto General Hospital and Toronto Western Hospital. This is a government bill although it is laid out very much like a private bill. As a result, although there are people here with very strong vested interests in it, they do not automatically have standing with the committee. If members of either of the hospitals have concerns about anything they hear during clause-by-clause, which we will be doing today, I suggest they catch the eye of a critic or of the parliamentary assistant. We can obviously make time for appropriate discussion, but you do not have automatic standing before the committee.

Today we are here to deal with clause-by-clause. All members are experienced in doing this. Since we have been through some long and arduous bills, this should seem quite straightforward to those of us who finished Bills 30, 54 and 55. We all have copies of the bill and there has been no substantial change in it, so I will not bother reading each section.

On section 1:

Mr. Chairman: We will starting off with the definitions in section 1, which begins, "In this act." Are there amendments?

Mr. Ward: Yes. There is a government amendment.

Mr. Chairman: Mr. Ward moves that section 1 of the bill be amended by adding thereto the following definition:

"'Toronto General Hospital' means the corporation named 'The Trustees of the Toronto General Hospital' and also known as Toronto General Hospital."

Mr. Ward: I think it is self-evident; it just clarifies the definition to include the trustees.

Motion agreed to.

Section 1, as amended, agreed to.

Sections 2 and 3 agreed to.

On section 4:

Mr. Chairman: Mr. Ward moves that subsection 4(1) of the bill be amended by,

(a) striking out "or will" in the fourth line and inserting in lieu thereof "will or other document";

(b) striking out "or will" in the 10th line and inserting in lieu thereof "will or other document"; and

(c) striking out "or will" in the 14th line and inserting in lieu thereof "will or other document."

Do you want to explain it?

Mr. Ward: Again, it broadens the list within that subsection to incorporate--the solicitor advises me there may be gifts in a form other than in a will.

Motion agreed to.

Mr. Chairman: Mr. Ward moves that subsection 4(2) of the bill be amended by,

(a) striking out "or will" in the third line and inserting in lieu thereof "will or other document";

(b) striking out "or will" in the 10th line and inserting in lieu thereof "will or other document"; and

(c) striking out "or will" in the 15th line and inserting in lieu thereof "will or other document."

It is in order and I presume the reasons are the same. Is there any discussion of the amendment?

Motion agreed to.

Section 4, as amended, agreed to.

Section 5 agreed to.

15:40

On section 6:

Mr. Chairman: Mr. Ward moves that paragraph 4 of subsection 6(1) be amended by striking out "One representative" in the first line and inserting in lieu thereof, "At least one but not more than two representatives."

Mr. Ward: This is to provide for up to two members of the auxiliary; a minimum of one but up to two.

Motion agreed to.

Mr. Chairman: Mr. Ward moves that paragraph 5 of subsection 6(1) be amended by striking out "committee" in the third line and inserting in lieu thereof "board."

Mr. Ward: This is just to clean up the language.

Motion agreed to.

Section 6, as amended, agreed to.

Section 7 to 9, inclusive, agreed to.

On section 10:

Mr. Chairman: Mr. Ward moves that section 10 of the bill be amended by striking out "Notwithstanding section 13 of the Public Hospitals Act" in the first and second lines.

Mr. Ward: I understand this applies to the board members who are financial contributors and are not necessarily subject to the requirements of the hospitals act with regards to no-proxy voting.

Mr. Chairman: It is separate from the others. It will come around right now. I apologize. Now that the members have it before them, will you repeat the explanation for changing the notwithstanding section?

Mr. Campbell: Section 13 of the Public Hospitals Act provides, "No member of a hospital corporation shall vote by proxy at any meeting of the corporation." Section 10 of the bill speaks of financial contributors and so we have made the technical adjustment to delete an erroneous reference to the Public Hospitals Act.

Motion agreed to.

Section 10, as amended, agreed to.

Sections 11 to 15, inclusive, agreed to.

On section 16:

Mr. Chairman: Mr. Ward moves that subsection 16(2) of the bill be struck out and the following substituted therefor:

"(2) Subject to the Public Hospitals Act, each person who is a member of the medical staff of Toronto Western Hospital or Toronto General Hospital continues as a member of the medical staff of the corporation for the term of the member's appointment."

Mr. Campbell: Under the Public Hospitals Act, the medical staff is to be given privileges and these privileges are subject to review or revocation under certain procedures and so on that are set out in the act. The first part of the amendment is to ensure that all members of the medical staff retain whatever protection they have under the Public Hospitals Act. Second, members of the medical staff do not have available to them the same successor rights that other members of staff have. In a sense, this is to protect the persons in that unprotected category.

Mr. D. S. Cooke: One of the arguments used yesterday by the hospital was that if we moved amendments to protect other staff, we would be infringing on the rights of an autonomous board. Is there not a parallel if we inject

this into the bill? Why would we do it for medical staff if we are not prepared to do it for nonphysician staff?

Mr. Campbell: I may have to ask the solicitors for the hospital to speak to this, but initially, I believe the autonomous board you are referring to is the Ontario Labour Relations Board.

Mr. D. S. Cooke: No. It is the autonomous board of the hospital.

Mr. Ward: As I understand it, this relates to hospital privileges and the ability for them to practise in the employ of the hospital. The nonmedical staff is protected by virtue of section 4 in that its collective agreement and whatever protections are built into it--

Mr. D. S. Cooke: What about those who do not have a collective agreement? What about the unorganized?

Mr. Ward: The medical staff has no successor rights.

Mr. D. S. Cooke: What about the nonunion employees?

Mr. Chairman: Ministry legal staff is suggesting it might be helpful to hear from a hospital lawyer. What is the opinion of the committee?

Agreed to.

Mr. Chairman: Will you come forward and volunteer some information for us?

Mr. Kenny: With respect to this, the other employees who are covered by collective agreements have the protection provided by section 63 of the Labour Relations Act which provides successor rights. Their contracts are also covered under section 4 and are continued. Similarly, other staff appointed through contract, which is any employee, is deemed to have a contract of employment and it is terminable upon reasonable notice. Pursuant to section 4, those contracts would be assumed by the new corporation. With respect to the medical staff, who are appointed pursuant to the Public Hospitals Act, it is arguable that such appointments are not contractual; hence, they need a specific clause in the act to provide them the same protection that section 4 provides others.

Mr. D. S. Cooke: How is the nonunion staff protected then?

Mr. Kenny: All employees are subject to contract unless they are appointed pursuant to some act such as the doctors in this circumstance. All contracts are--

Mr. D. S. Cooke: You are saying that for a nonunion staff member who is dismissed by the hospital and does not have the protection of a collective agreement, the avenue is to go under the Ontario Labour Relations Act and claim unfair dismissal and go to the courts.

15:50

Mr. Kenny: His avenue would be redress in front of the courts--that is correct--if there is some violation of his contract.

Mr. D. S. Cooke: We are prepared to put an amendment that deals with

physicians in a slightly different way than with nonphysician staff. I still hope some people will look at our amendments. The arguments that were made as to why no amendments to this bill were needed to protect the staff of CUPE and other representatives who were before us yesterday afternoon do not hold any water. This further proves that you will be able to deal with different groups of people in different ways.

Mr. Ward: We are willing to deal differently with people who do not have the protection of a contract in any form.

Mr. D. S. Cooke: Do you mean to tell me that a nonunion employee has the protection of a contract? Do not give me that. Have you not had people come into your office?

Mr. Ward: I am giving you that.

Mr. D. S. Cooke: They have to go to court and they have to try to claim they have been unfairly--

Mr. Ward: The basis for going is the fact that they have a contract.

Mr. D. S. Cooke: Carry on.

Motion agreed to.

Section 16, as amended, agreed to.

Mr. Chairman: Mr. D. S. Cooke moves that the bill be amended by adding thereto the following section:

"16a.(1) Each employee of Toronto Western Hospital and Toronto General Hospital continues as an employee of the corporation and shall be employed by the corporation,

"(a) in a position substantially similar to the position in which the person was employed before the amalgamation; and

"(b) upon terms not less favourable as to remuneration and all other benefits enjoyed by the employee before the amalgamation.

"(2) No employee of Toronto General Hospital or Toronto Western Hospital shall suffer a loss of employment as a result of amalgamation."

Mr. D. S. Cooke: All this motion does is to take some of the policy the hospital boards say they have agreed to and insert it into the legislation. We are dealing with a hospital that has many employees and a budget of around \$300 million a year. As I said on second reading, while philosophically this is a good move--the rationalization of services will save money and I hope will improve services--when you are dealing with people, hospital workers who are not well-paid, there is nothing wrong in alleviating some of the nervousness by injecting these guarantees into the legislation.

This does nothing to take away from the flexibility of the hospital. This simply incorporates into the legislation the policy they say they are willing to live by. We saw all sorts of protections rightfully built into Bill 30 when we were talking about extension of funding because we were responding

to concerns about potential job loss resulting from a major public decision by government to go ahead and extend funding.

We see here a decision to amalgamate two hospitals that will create the largest hospital in the province by far. Before we pass judgement on this bill, we are entitled to and have an obligation to put some of these job guarantees into the legislation. This is not simply a process where the Legislature or the members of this committee do what they are asked to do by the board to facilitate amalgamation. We have a policy question and a responsibility to make sure that the amalgamation proceeds in the best interests of all the people involved.

We are not here just to rubber-stamp a bill presented to us by the two hospitals involved. We are not going any further than what the hospital was willing to put in its policy. The difference is that while a policy can be changed by a board, legislation offers further protection. The only way this policy could be changed would be to amend the legislation. I think it is fair and I hope the government members and the members of the Conservative Party will consider supporting this amendment.

Mr. Ward: I will ask the committee's indulgence so that counsel for the hospital can respond in a little detail. I want to reiterate that, through section 4, the government is fully conscious of its responsibilities to ensure the hospital lives up to whatever agreements are in existence or whatever has been negotiated on behalf of the workers. I believe we do that. To take this opportunity to make changes that are covered or to write into legislation items that form part of the collective agreement between a hospital and its employees--

Mr. D. S. Cooke: Not all the employees have a collective agreement.

Mr. Ward: They all have a contract.

Mr. D. S. Cooke: Have you read the collective agreement?

Mr. Ward: I have read excerpts from the collective agreement that relate to this. Do you want me to quote it back to you?

Mr. D. S. Cooke: Have you read their collective agreement?

Mr. Ward: I have read portions of it that relate to this issue.

Mr. D. S. Cooke: To the layoffs? Do not tell me there is protection for layoffs in those collective agreements.

Mr. Ward: I say there is. I ask that counsel for the board respond in more detail with regard to the issue of layoffs.

Mr. Chairman: Is it the committee's will?

Mr. D. S. Cooke: I do not mind, but we had extensive presentations on this very issue from the counsel of the hospitals yesterday.

Mr. Ward: You do not want to hear him on this?

Mr. Chairman: There has to be unanimous consent.

Mr. Andrewes: You have my consent.

Mr. D. S. Cooke: I give mine, but we did cover this yesterday.

Mr. Kenny: As indicated, we had some discussions on this yesterday. We indicated that the appropriate place to deal with the questions of job protection, etc., was in the collective-bargaining process. There is a system in place to deal with that. That collective-bargaining process has recently resulted in a clause being inserted in the contract of the Canadian Union of Public Employees full-time clerical unit providing the job protections. I think it is a demonstration that the collective-bargaining process can provide the protection.

The hospital agrees that employees on the active payroll of the hospital at the day of the award will not lose their employment at the hospital by reason only of the merger of Toronto Western Hospital and Toronto General Hospital, so some protection has been provided through the collective-bargaining process. As other contracts come up, one can expect that kind of protection will be subject to negotiation.

Mr. D. S. Cooke: Why should this amendment then cause any problems whatsoever to the hospital?

Mr. Kenny: We think we should be sensitive about putting these kinds of things into a bill instead of having the appropriate discussions with the various bargaining agencies of the employees in question. They were interested in some substantial input yesterday. We heard from only some of them and their inputs differed. The hospital feels it should be able to address these kinds of things at the bargaining table where if there is no agreement, it is subject to a third-party determination, that third party being an experienced individual in labour relations who can deal with the various problems or concerns that might arise and that we might not be as familiar with at this committee.

Mr. Andrewes: Can I ask Mr. Cooke what his term "substantially similar" means?

Mr. D. S. Cooke: I suppose that means just what it says. If a housekeeper was doing a particular job at one hospital and was transferred to another hospital, he or she would be doing substantially similar work.

16:00

Mr. Andrewes: Is it identical work?

Mr. D. S. Cooke: No. We deliberately did not put in "identical" because the jobs may vary from location to location and we did not want to say they had to do identical work.

Mr. Andrewes: It implies identical work.

Mr. D. S. Cooke: I do not think so. If you have an alternative wording, that is fine. This was to build in flexibility for the hospital.

Mr. Andrewes: I think the term "substantially similar"--Mr. Allen can correct me--is in Bill 30, is it not? It deals with a teacher doing substantially similar work as a teacher in another school system. In that

context it almost implies identical work in one institution or the other, depending on where the transfer takes place.

Mr. D. S. Cooke: What about different wording? How about removing the word "substantially"? The point is that there be a job guarantee and that somebody not be left without a job. That is the point of this amendment.

Mr. Andrewes: It is an employment guarantee rather than a specific job guarantee.

Mr. D. S. Cooke: That is right.

Mr. Andrewes: Thanks for that clarification.

Mr. Allen: Perhaps I can shed a little light on the term "substantially similar" in Bill 30. It did not mean to adjudicate between options a teacher might have as a teacher or a supervisor as a supervisor or a director as a director. It did mean that if you were within the broad ambit of a teaching position, you should be transferred into a teaching position, even though that might require a bit of retraining or what have you. It would require comparable skills and so on. What it did not mean was that a supervisor would be reduced to a day classroom teacher or a director to a supervisory position. It was a very broad concept in that bill and I think it reflects the concept here.

Mr. Chairman: Is there any further discussion of Mr. Cooke's amendment to add a section 16a?

Motion negatived.

Mr. Chairman: Mr. Cooke, your next amendment now will be numbered section 16a, rather than 16b.

Mr. Cooke: That is right.

Mr. Chairman: Mr. Cooke moves that the bill be amended by adding thereto the following section:

"16a. During the first two years after the amalgamation, the corporation shall not contract with third parties for the provision of any services that were being provided by employees at the date of amalgamation."

Mr. D. S. Cooke: It is fairly straightforward, except that it is a very restricted amendment in that we are suggesting this be for only two years. I believe this would offer some protection to the employees and alleviate some of the anxiety that exists in these institutions now, which obviously is directly related to the amalgamation of the two hospitals. Otherwise, the amendment I would have been presenting would have been for no contracting out, period, for ever.

There will be times when contracting out will occur at this hospital. If this section is passed, it will mean that for at least two years, if there are going to be jobs available, the people who are going to have access to those jobs are going to be the employees at the hospital now. It is just an addition for job guarantees that will alleviate some of the anxiety that exists at the hospital. It is in line with what I understand the hospital tells us is its policy.

Mr. Ward: I want to reiterate that the issue of contracting out was part and parcel of the collective agreement as it related to the unionized workers. If the concern is--is this for the nonunionized worker?

Mr. D. S. Cooke: I do not know what contracts you are reading and I do not know where you think the health care system is in Ontario, but if all these protections exist in the collective agreement, I would like to know why so much contracting out is happening in the public hospital system?

Mr. Ward: Is your concern here the issue of contracting out relative to this amalgamation or is it beyond that?

Mr. D. S. Cooke: My concern here is that to have further contracting out during the two years the transition is occurring will simply increase the problems of the transition. To say there will not be any contracting out for two years will alleviate some of the anxieties and make the transition easier.

Mr. Ward: Counsel for the hospital can, if you wish, respond with regard to what provisions the hospital has made concerning the issue of contracting out.

Mr. Chairman: What is your pleasure? Do you wish to hear counsel?

Mr. D. S. Cooke: We know which way the amendment is going to go.

Mr. Chairman: With a sense of inevitability, why do I not call the vote?

Motion negatived.

Mr. Chairman: There was a proposed section 16c.

Mr. D. S. Cooke: The first section 16c was an original position and the second was going to be an alternative, neither of which now is relevant since the committee scuttled section 16a.

Mr. Chairman: Therefore, this will not come forward.

Sections 17 to 19, inclusive, agreed to.

Bill, as amended, ordered to be reported.

Mr. Chairman: Thank you all very much and thank you to the hospital representatives for your assistance this afternoon. I want to remind people that all committees do not operate this efficiently. Another record has been set. We are adjourned.

The committee adjourned at 4:07 p.m.

